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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 873

ST. ELMO HAWKINS,

Petitioner,

v.

GENERAL MOTORS CORPORATION, GEORGE R. JONES, AND CHRYSLER MOTORS CORPORATION,

Respondents.

REPLY OF RESPONDENT GEORGE R. JONES TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT

On August 1, 1967, petitioner filed his complaint in the United States District Court for the Eastern District of Virginia against the three respondents herein. He alleged that his original idea for a patent which he disclosed to respondent Jones' partner and associate as his patent attorneys was fraudulently or negligently disclosed by them to respondents General Motors and Chrysler Corporation. As a result of this alleged fraudulent conspiracy, petitioner claimed respondent General Motors obtained two patents

encompassing his idea. As petitioner and respondent Jones are both residents of the Commonwealth of Virginia, a motion was filed by respondent Jones to dismiss on the ground of lack of diversity of citizenship. Petitioner then on October 18, 1967, amended his complaint invoking the jurisdiction of the District Court under the Sherman, Clayton and related acts alleging that the respondents had fraudulently engaged in a series of conspiracies to defraud people of inventions which acts substantially affected interstate commerce adversely and resulted in the loss of petitioner's alleged invention.

All respondents filed answers and voluminous depositions were taken over an extended period of time. Finally the case came on for pretrial on January 24, 1969, approximately one and a half years after the original complaint was filed and fifteen months after the filing of the amended complaint. At that time petitioner submitted a motion, copy of which is set forth in Appendix F to petitioner's brief (page 23a). It sought to join as parties other partners of the firm of Beale and Jones, to have the amended complaint state that petitioner was the owner of the alleged invention in question, and that he sought an injunction agianst its appropriation and utilization. In the same motion for the first time, petitioner demanded a jury trial. The court without objection permitted the petitioner to claim ownership of the alleged invention which was already the basis of his claim and to seek an injunction but denied the demand for a jury trial. Petitioner's motion was not filed or served as required by Rule 38 of the Federal Rules of Civil Procedure. It was in effect simply a motion to conform the pleadings to the proposed evidence, a fairly common tactic at pretrial. The trial began on February 17, 1969, and concluded on February 19, 1969, when the district judge dismissed the amended complaint at the conclusion of petitioner's case on the ground that no proof of conspiracy, fraud or negligence was introduced (App. Pet. Brief, p. 1a to 19a).

Appeal was taken to the United States Court of Appeals for the Fourth Circuit, which upheld the District Court's

ruling in a decision reported in 427 F.2d, 148, copy of which is included in appendix to petitioner's petition, page 20a. The questions raised here by petitioner as ground for this Court's issuance of the writ were not raised, briefed or orally argued in the presentation before the Fourth Circuit.

At the trial in the District Court, petitioner abandoned the theory of his amended complaint, filed in October, 1967, that the respondents had engaged in a series of conspiracies in violation of the anti-trust acts. He narrowed his presentation in an attempt to establish that respondent Jones' partner and associate negligently or fraudulently disclosed the confidential information concerning petitioner's alleged invention to respondent General Motors Corporation and Chrysler Motors Corporation, enabling them to secure two patents from the United States Patent Office. The difficulty with petitioner's presentation, however, was that the witnesses whom he called denied the existence of any fraud, negligence, or conspiracy and affirmatively testified that petitioner's idea for his alleged invention did not read on either of the patents obtained by respondent General Motors. Indeed the undisputed proof showed that petitioner did not finalize his alleged idea that he originally submitted in April, 1956, to respondent Jones' partner and associate until September 27, 1957, on which date he presented the final drawing of his alleged invention (Vol. IV, Jones Ex. 10, Vol. XIII, p. 568, original record Ct. of App.). The application for the patent about which petitioner is complaining the loudest was filed by respondent General Motors Corporation on December 6, 1956 (Pet. Brief, p. 3), so it would have been physically impossible for respondent Jones' partner or associate to have transmitted any information of any kind to the other respondents concerning petitioner's alleged invention.

ARGUMENT

THE WRIT SHOULD NOT BE GRANTED

There Exists No Special or Important Reasons For the Issuance of the Writ

The case below was decided by the Federal District Court for the Eastern District of Virginia and there is, therefore, no question of a state court deciding a federal matter. There is no conflict among the decisions of the federal circuit courts of appeals. There is no important federal question which has not been decided nor has a federal question been decided in conflict with applicable decisions of this court, nor has there been a departure from the accepted and usual course of judicial proceedings.

The Right to a Jury Trial May Be Waived

The cases make it abundantly clear that the Seventh Amendment to the Constitution did not create a right to a jury trial but merely preserved the rights existing at common law at the time of the adoption of the Constitution. Hence, such right is not jurisdictional in nature and may be waived. See *Kearney v. Case*, 12 Wall 275, 281, 79 U.S. 275; *General Tire and Rubber Company v. Honorable R. Dorsey Watkins*, 331 F.2d 192 (cert. denied 377 U.S. 952); *American Manufacturers Mutual Insurance Company v. American Broadcasting-Paramount Theatres, Inc.*, 45 FRD 38.

The District Court Properly Exercised Its Discretion In Refusing To Grant Jury Trial

The original complaint was filed August 1, 1967, and an amended complaint October 18, 1967. Answers were timely filed by all respondents. Demand for a jury trial was not made until the pretrial hearing on January 24, 1969, approximately one and a half years after the proceedings were instituted, and fifteen months after filing the amended

complaint and less than a month before trial and long after any documents described as pleadings in Rule 7 of the Federal Rules of Civil Procedure had been filed. Petitioner's request at pretrial was simply one to conform the pleadings to his expected proof. The theory of the proceedings was in no way changed (See Sec. 873, Vol. 2B, Barron & Holtzoff, Fed. Prac. and Procedure, p. 35, 36; Moores Federal Practice, 1969 Ed. Vol. 5, Sec. 38-39 p. 318, Sec. 38-41, p. 329). Petitioner wanted to express what was inherent in his amended complaint, namely that he was the owner of the alleged invention and that he wanted to prevent its appropriation by anyone else. Both of these requests which the Court granted were simply matters of clarification and were inherently a part of the original and amended pleadings of the petitioner. No additional pleading was filed by petitioner as a result of granting his motion. Courts generally will permit the parties at any time during the course of the trial to conform the pleadings to the facts. If this type of action was to be considered a pleading within the terms of Rule 7 of the Federal Rules of Civil Procedure there never would be a final determination as to the question of waiver of a jury trial and Rule 38 would be superfluous.

Petitioner's position that findings of fact regarding the ownership of his alleged invention were necessary and not made by the District Judge is simply incorrect. The District Court found (Pet. Brief p. 10) that petitioner failed to support his charge that respondents stole or illegally acquired his alleged invention. Thus assuming ownership by petitioner of his idea the court said it was not acquired or disclosed by any of respondents.

Petitioner Failed To Raise the Jury Trial Question in the Circuit Court

Petitioner failed, either in his main or reply briefs in the Fourth Circuit Court of Appeals or in oral argument before that court, to raise the jury trial point. Thus, it is clear that he intended to abandon his point and did not think it of much substance.

Petitioner Was Not Harmed by the Denial of His Request for Jury Trial in the District Court

The District Judge after a very full hearing at which not only numerous witnesses testified but voluminous depositions were introduced determined as his excellent analytical opinion demonstrates that there was absolutely no proof of any conspiracy or negligence. The Fourth Circuit Court of Appeals in its opinion after an examination of briefs and the record stated at 427 F.2d 148:

> "The trial judge afforded plaintiff every opportunity to prove his allegations but Hawkins was able to demonstrate neither the existence of a conspiracy nor actionable negligence on the part of the attorney." (App. C, P. 20a, Petitioner's brief)

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for writ of certiorari should not be granted and the writ should not issue.

Respectfully submitted,

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